

AMENDED IN ASSEMBLY JANUARY 6, 2000

AMENDED IN ASSEMBLY JANUARY 3, 2000

AMENDED IN ASSEMBLY MAY 6, 1999

CALIFORNIA LEGISLATURE—1999–2000 REGULAR SESSION

ASSEMBLY BILL

No. 1038

**Introduced by Assembly Member Robert Pacheco
(Coauthors: Assembly Members Havice and Zettel)**

February 25, 1999

An act to amend ~~Section 4501.1~~ *Sections 4501.1 and 4501.5* of the Penal Code, relating to gassing.

LEGISLATIVE COUNSEL'S DIGEST

AB 1038, as amended, Robert Pacheco. Prisoners: gassing.

(1) Existing law provides that every person confined in the state prison who commits a battery upon the person of any officer or employee of the state prison by intentionally placing or throwing, or causing to be placed or thrown, human excrement or other bodily fluids or substances, otherwise known as gassing, is guilty of aggravated battery, a felony punishable by imprisonment in the state prison for 2, 3, or 4 years, to be served consecutively. Under existing law, these provisions will be repealed on January 1, 2001.

This bill would expand this offense to include gassing batteries committed upon any other person, and would make this crime applicable to persons confined in local detention facilities, *as specified*. ~~This bill would also recast the penalty provision applicable to this crime to include offenses~~

~~committed against other persons confined within a state prison.~~ The bill would *require the person in charge of a local detention facility to investigate violations of the bill, as specified.* The bill would also eliminate the January 1, 2001, repeal date for these provisions. By expanding the scope of an existing crime *and imposing new duties on local officials*, this bill would impose a state-mandated local program.

~~(2) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.~~

~~This bill would provide that no reimbursement is required by this act for a specified reason.~~

(2) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement, including the creation of a State Mandates Claims Fund to pay the costs of mandates that do not exceed \$1,000,000 statewide and other procedures for claims whose statewide costs exceed \$1,000,000.

This bill would provide that with regard to certain mandates no reimbursement is required by this act for a specified reason.

With regard to any other mandates, this bill would provide that, if the Commission on State Mandates determines that the bill contains costs so mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 4501.1 of the Penal Code is
2 amended to read:

3 4501.1. (a) Every person confined in the state prison
4 or a local detention facility who commits a battery upon
5 any person by gassing is guilty of aggravated battery and
6 shall be ~~imprisoned in the state prison for two, three, or~~

1 ~~four years, to be served consecutively.~~ punished as
2 ~~specified in Section 4501.5.~~

3 (b) For purposes of this section, “gassing” means
4 intentionally placing or throwing, or causing to be placed
5 or thrown, upon the person of another, any mixture of
6 human excrement or other bodily fluids or substances.

7 (c) The warden or other person in charge of the state
8 prison *or a local detention facility* shall use every available
9 means to immediately investigate all reported or
10 suspected violations of subdivision (a). If there is
11 probable cause to believe that the inmate has violated
12 subdivision (a), the chief medical officer of the state
13 prison *or a local detention facility*, or his or her designee,
14 may, when he or she deems it medically necessary to
15 protect the health of an officer or employee who may
16 have been subject to a violation of this section, order the
17 inmate to receive an examination or test for hepatitis or
18 tuberculosis or both hepatitis and tuberculosis on either
19 a voluntary or involuntary basis immediately after the
20 event, and periodically thereafter as determined to be
21 necessary by the medical officer in order to ensure that
22 further hepatitis or tuberculosis transmission does not
23 occur. These decisions shall be consistent with an
24 occupational exposure as defined by the Center for
25 Disease Control and Prevention. The results of any
26 examination or test shall be provided to the officer or
27 employee who has been subject to a reported or
28 suspected violation of this section. Nothing in this
29 subdivision shall be construed to otherwise supersede the
30 operation of Title 8 (commencing with Section 7500).
31 Any person performing tests, transmitting test results, or
32 disclosing information pursuant to this section shall be
33 immune from civil liability for any action taken in
34 accordance with this section.

35 (d) The warden or other person in charge of the state
36 prison *or a local detention facility* shall refer all reports of
37 aggravated battery by gassing to the local district
38 attorney for prosecution.

39 (e) The Department of Corrections shall report to the
40 Legislature, by January 1, 2000, its findings and

1 recommendations on gassing incidents at the state prison
2 and the medical testing authorized by this section. The
3 report shall include, but not be limited to, all of the
4 following:

5 (1) The total number of gassing incidents at each state
6 prison facility up to the date of the report.

7 (2) The disposition of each gassing incident, including
8 the administrative penalties imposed, the number of
9 incidents that are prosecuted, and the results of those
10 prosecutions, including any penalties imposed.

11 (3) A profile of the inmates who commit the
12 aggravated batteries, including the number of inmates
13 who have one or more prior serious or violent felony
14 convictions.

15 (4) Efforts that the department has taken to limit
16 these incidents, including staff training and the use of
17 protective clothing and goggles.

18 (5) The results and costs of the medical testing
19 authorized by this section.

20 ~~SEC. 2. No reimbursement is required by this act~~
21 ~~pursuant to Section 6 of Article XIII B of the California~~
22 ~~Constitution because the only costs that may be incurred~~
23 ~~by a local agency or school district will be incurred~~
24 ~~because this act creates a new crime or infraction,~~
25 ~~eliminates a crime or infraction, or changes the penalty~~
26 ~~for a crime or infraction, within the meaning of Section~~
27 ~~17556 of the Government Code, or changes the definition~~
28 ~~of a crime within the meaning of Section 6 of Article~~
29 ~~XIII B of the California Constitution.~~

30 *SEC. 2. Section 4501.5 of the Penal Code is amended*
31 *to read:*

32 4501.5. (a) Every person confined in a state prison of
33 this state who commits a battery upon the person of any
34 individual who is not himself a person confined therein
35 shall be guilty of a felony and shall be imprisoned in the
36 state prison for two, three, or four years, to be served
37 consecutively.

38 (b) *Every person confined in a local detention facility*
39 *who commits a violation of Section 4501.1 shall be*
40 *imprisoned in the state prison for two, three, or four years,*

1 *but shall complete the remainder of his or her prescribed*
2 *term in the local detention facility prior to imprisonment*
3 *in the state prison for two, three, or four years.*

4 *SEC. 3. No reimbursement is required by this act*
5 *pursuant to Section 6 of Article XIII B of the California*
6 *Constitution for certain costs that may be incurred by a*
7 *local agency or school district because in that regard this*
8 *act creates a new crime or infraction, eliminates a crime*
9 *or infraction, or changes the penalty for a crime or*
10 *infraction, within the meaning of Section 17556 of the*
11 *Government Code, or changes the definition of a crime*
12 *within the meaning of Section 6 of Article XIII B of the*
13 *California Constitution.*

14 *However, notwithstanding Section 17610 of the*
15 *Government Code, if the Commission on State Mandates*
16 *determines that this act contains other costs mandated by*
17 *the state, reimbursement to local agencies and school*
18 *districts for those costs shall be made pursuant to Part 7*
19 *(commencing with Section 17500) of Division 4 of Title*
20 *2 of the Government Code. If the statewide cost of the*
21 *claim for reimbursement does not exceed one million*
22 *dollars (\$1,000,000), reimbursement shall be made from*
23 *the State Mandates Claims Fund.*

